

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

EMMA BOWAR,

Plaintiff,

v.

THE CITY OF EL PASO,

Defendant.

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Cause No.: 3:21-CV-00257-KC

**DEFENDANT THE CITY OF EL PASO ORIGINAL ANSWER IN RESPONSE TO
PLAINTIFFS' FIRST AMENDED COMPLAINT**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, The CITY OF EL PASO, (hereinafter referred to as "City") and files this, its Original Answer to Plaintiffs' First Amended Complaint Defendant City of El Paso, Texas' Original Answer to Plaintiffs' First Amended Complaint and would show the Court as follows:

INTRODUCTION

1. Defendant denies the allegations set forth in Paragraph 1 as alleged against Defendant City.
2. Defendant denies the allegations in Paragraph 2.
3. Defendant denies the allegations in Paragraph 3. Defendant objects to this pleading on the basis that the City of El Paso, Texas as a governmental entity is immune from an award of public funds for punitive damages as a matter of law.

VENUE AND JURISDICTION

4. Defendant admits the Plaintiff asserts claims pursuant to the statutory provision set forth in Paragraph 4 but denies that Plaintiff is entitled to any relief under this provision.

5. Defendant admits the Plaintiff asserts claims pursuant to the statutory provision set forth in Paragraph 5 but denies that Plaintiff is entitled to any relief under this provision.

6. Defendant admits the Plaintiff has properly stated the relevant jurisdiction statute in Paragraph 6.

7. Defendant admits to the allegations in Paragraph 7.

PARTIES

8. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation that the Plaintiff is a “citizen” of El Paso Texas as alleged in Paragraph 8.

9. Defendant admits to the allegations in Paragraph 9.

STATEMENT OF FACTS

10. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 10, therefore, Defendant denies.

11. Defendant admits as to a portion of Paragraph 11 but lacks knowledge or information sufficient to form a belief about the truth of the allegation regarding the live stream and televised allegations contained in Paragraph 11.

12. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 12, therefore, Defendant denies.

13. Defendant lacks knowledge or information sufficient to form a belief about the truth of the

allegation contained in Paragraph 13, therefore, Defendant denies.

14. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 14, therefore, Defendant denies.

15. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 15, therefore, Defendant denies.

16. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 16, therefore, Defendant denies.

17. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 17, therefore, Defendant denies.

18. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 18, therefore, Defendant denies.

19. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 19, therefore, Defendant denies.

20. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 20, therefore, Defendant denies.

21. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 21, therefore, Defendant denies.

22. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 22, therefore, Defendant denies.

23. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 23, therefore, Defendant denies.
24. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 24, therefore, Defendant denies.
25. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 25, therefore, Defendant denies.
26. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 26, therefore, Defendant denies.
27. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 27, therefore, Defendant denies.
28. Defendant denies the allegations in Paragraph 28.
29. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 29, therefore, Defendant denies.
30. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 30, therefore, Defendant denies.
31. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 31, therefore, Defendant denies.
32. Defendant denies the allegations in Paragraph 32.

33. Defendant admits the Plaintiff has properly stated the relevant City Code section in Paragraph 33.

34. Defendant admits to the allegations in Paragraph 34.

35. Defendant admits to the allegations in Paragraph 35.

36. Defendant denies the allegations in Paragraph 36.

37. Defendant denies the allegations in Paragraph 37

**CAUSES OF ACTION
FIRST CAUSE OF ACTION
DECLARATORY JUDGMENT
(Declaring El Paso Municipal Code Unconstitutional)
(Against Defendant City)**

38. No response is required under Rule 8 of the Federal Rules of Civil Procedure to Paragraph 38.

39. Defendant admits to the allegations in Paragraph 39.

40. Defendant denies the allegations in Paragraph 40.

41. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 41, therefore, Defendant denies.

42. Defendant denies the allegations in Paragraph 42.

43. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 43, therefore, Defendant denies.

44. Defendant denies the allegations in Paragraph 44.

45. Defendant denies the allegations in Paragraph 45.

46. Defendant denies the allegations in Paragraph 46.

47. Defendant denies the allegations in Paragraph 47.

48. Defendant denies the allegations in Paragraph 48.

**SECOND CAUSE OF ACTION
SUPPRESSION OF FREEDOM OF SPEECH AND EXPRESSION
(42 U.S.C. §1983 – Violation of First and Fourteenth Amendments)
(Against Defendant City)**

49. No response is required under Rule 8 of the Federal Rules of Civil Procedure to Paragraph 49.

50. Defendant admits the Plaintiff has properly stated the First Amendment to the United States Constitution in Paragraph 50.

51. Defendant admits the Plaintiff has properly quoted the reference case in Paragraph 51.

52. Defendant denies the allegations in Paragraph 52.

53. Defendant denies the allegations in Paragraph 53.

54. Defendant denies the allegations in Paragraph 54.

55. Defendant denies the allegations in Paragraph 55.

56. Defendant denies the allegations in Paragraph 56.

57. Defendant denies the allegations in Paragraph 57. Defendant further objects to this pleading on the basis that the City of El Paso, Texas as a governmental entity is immune from an award of public funds for punitive damages as a matter of law.

58. Defendant denies the allegations in Paragraph 58.

**THIRD CAUSE OF ACTION
SUPPRESSION OF RIGHT TO ASSEMBLY
(42 U.S.C. §1983 – Violation of First and Fourteenth Amendments)**

59. No response is required under Rule 8 of the Federal Rules of Civil Procedure to Paragraph 59.

60. Defendant admits to the allegations in Paragraph 60.

61. Defendant denies the allegations in Paragraph 61.

62. Defendant denies the allegations in Paragraph 62.

63. Defendant denies the allegations in Paragraph 63.

64. Defendant denies the allegations in Paragraph 64.

65. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation contained in Paragraph 65, therefore, Defendant denies.

66. Defendant denies the allegations in Paragraph 66. Defendant further objects to this pleading on the basis that the City of El Paso, Texas as a governmental entity is immune from an award of public funds for punitive damages as a matter of law.

67. Defendant denies the allegations in Paragraph 67.

ATTORNEYS FEES

68. Defendant denies that Plaintiff is entitled to the relieve as alleged in Paragraph 68.

69. Defendant denies that Plaintiff is entitled to the relieve as alleged in Paragraph 69.

JURY TRIAL DEMAND

70. No response is required under Rule 8 of the Federal Rules of Civil Procedure to Paragraph

70.

DEFENSES AND AFFIRMATIVE DEFENSES

71. Defendant asserts official and/or governmental immunity in connection with any alleged negligent acts or omissions asserted against Defendant. Any and all actions taken by Defendant and by others who may have acted on behalf of Defendant were taken in good faith and official and/or governmental immunity bars Plaintiffs' claims as to Defendant.

72. Defendant denies that it can be liable under 42 USCA §1983 for any exemplary damages.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants City respectfully request that all relief requested by Plaintiff be denied, and that Defendant recovers its costs, reasonable attorney's fees, and any additional relief to which they may be entitled in law or in equity.

Respectfully submitted,

KARLA M. NIEMAN, City Attorney
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Date: August 8, 2022.

/s/Mathew Engelbaum
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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2022 a true and correct copy of the foregoing was e-filed with the Clerk of this Court using the CM/ECF system and that a courtesy copy was forwarded to:

Fernando Chacon
Law Office of Fernando Chacon
730 Hemphill Court
El Paso, Texas 79907
Attorney.fchacon@yahoo.com

Attorney for Plaintiff

/s/Mathew Engelbaum
Mathew J. Engelbaum